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TAB A

DISCUSSION OF LAWS AND REGULATIONS APPLICABLE TO TEMPORARY PROMOTIONS

1. The basic concept of position classification within the Government is set forth in the Classification Act of 1949. However, the fundamental principles go back much further and include the prior Classification Act of 1923. Under that concept each position within Government is classified and assigned a rating within the GS schedule. The law itself specifies in considerable detail the criteria applicable to each grade. Included among the criteria are such factors as degree of skill, experience, training, education, and responsibility. When an individual is assigned to a classified position he also is evaluated to see if his personal qualifications meet the requirements for the position. Under this system an individual cannot hold a GS rating higher than that pertaining to the position. On the other hand an individual with a lower grade can be placed in a higher grade position for a temporary period. Eventually he would be promoted to the rating of the position or else, by reclassification action, the position would be downgraded. Of course, there cannot be too great a disparity between the rating of the position and the rating of the individual.

a. For new appointees there is usually required a trial period of not more than one year. Upon satisfactory completion of the trial period, employees then have the equivalent of a permanent appointment. Where the job has been filled from Civil Service registers through their normal recruitment procedures, including competitive examinations, this permanent appointment generally confers what is known as "status". Under pertinent law and Government practice the permanent employee has the expectation that having attained a particular position, he will remain in that position or an equivalent one so long as he renders satisfactory service. With respect to a Veteran, this expectation is reinforced by the Veterans Preference Act. That Act provides for orderly procedures to discharge or downgrade a Veteran. If the Veteran does not believe that the adverse action affecting him was appropriate he may appeal his case to the Civil Service Commission. Upon review the Civil Service Commission has the authority to direct restoration to the former position and rescission of the adverse action. Even after the adverse action has been upheld by the Civil Service Commission, the Veteran has the further right of appealing the matter to the Federal courts which in turn could overrule both the Agency and the Civil Service Commission and direct restoration.

b. This Agency is specifically exempted from the provisions of the Classification Act of 1949. It should be noted, however, that our justification to the Civil Service Commission and the Bureau of the Budget for requesting exemption was based on security considerations and the impossibility within those security restrictions of having the Civil Service Commission audit classification procedures and actions. In writing, we have advised those agencies that as a matter of policy CIA will follow the principles of the Classification Act insofar as possible.

c. This Agency is not exempted from the provisions of the Veterans Preference Act. Veterans can properly appeal a personnel action from this Agency whether employed on vouchered or unvouchered funds in the same manner as a Veteran with Civil Service status at the Department of Agriculture. An employee of CIA does not gain any Civil Service status solely by virtue of employment with CIA. If he had status prior to coming with CIA he does not lose it but he gains nothing more.

25X9A2 2. There are no legal limitations on the number of supergrades which CIA may establish. The Director has determined that the number of individuals who can be granted supergrades will not exceed [REDACTED]. This figure excludes 5 positions which have been established by statute. Those positions include the Director, the Deputy Director, and three Scientific Intelligence positions (the salaries of these three positions can be fixed at a maximum of \$15,000). The latter three positions are authorized by Section 9, Public Law 110. The Bureau of the Budget and the Congress are vitally interested in the total number of supergrades authorized by CIA. Their interest is such that we do not have a completely free hand in establishing the ceiling on supergrade positions.

a. The Bureau of the Budget is fully aware of the number of supergrades presently occupied as well as our ceiling. Whether CIA considered an occupant of a supergrade as holding the rating on a temporary basis or whether on a permanent basis would be of no concern in any considerations by the Bureau of the Budget or the Congress of the propriety of the number of supergrades.

b. Recently there had been established within CIA, a Supergrade Review Board to consider which jobs should be classified in the supergrade category and at what rating. That Board made a number of recommendations concerning the ratio of supergrade jobs to all jobs within the Agency and also recommended a specific list of supergrade positions. The total number on that list was in excess of the present ceiling approved by the Director. The Supergrade Board also recommended that all Senior Representative jobs be classified on a sliding scale from GS-15 through 18, on the theory that at different times the responsibilities in particular areas would vary and consequently the applicable rating should vary. Although this recommendation has not been formulated into a written policy, it is being followed at this time. Further, past actions indicate that a very flexible approach has been taken toward ratings to be assigned to Senior Representatives both in terms of upgrading the rating previously assigned to the job when a higher rated individual was assigned, and the individual retaining a lower rating when assigned to a post with a higher rating.

TAB B

DISCUSSION OF OTHER TEMPORARY PROMOTION SYSTEMS

1. Temporary Promotions in the Military Services: The permanent and temporary promotion policy of the military services, embodied in the Officer Personnel Act of 1947, avoids both the rigidities of the promotion system used by the services prior to World War II (based on vacancies) and the shortcomings of the wide-spread use of temporary promotions during the war. Under the Act, the services are limited as to the total number of Regular Officers who may hold permanent appointments in the various grades.

a. In addition to permanent promotions, temporary promotions may be granted whenever the total authorized strength (Regular and Reserve) for the grades and categories exceeds the number of Regular Officers holding permanent commissions in such grades.

b. Temporary promotions to a grade are effected by the selection of a designated number of Officers from among a larger number having the requisite seniority for consideration, but the time-in-grade requirements for temporary promotions are more liberal than those stipulated for permanent promotions. Temporary promotions are more significant than permanent promotions in the Army and Air Force, since most Regular and Reserve Officers are currently serving in temporary grades.

c. Two principal objectives are sought through temporary promotions in the services, namely:

(1) The services do not have a sufficient number of Regular Officers eligible for permanent promotion to meet the grade requirements of the active military establishment, so that the required numbers in each grade are secured by the temporary promotion of Regular and Reserve Officers on active duty.

(2) Through temporary promotions, the services are able to advance outstanding Officers for positions of increased leadership and responsibility, since those recommended for promotion, among the Officers eligible for consideration (by reason of seniority), are selected on a "best qualified" basis.

d. Temporary promotions are not temporary in the sense that they are effective for a definite period of limited duration or are used as a probationary period. Unlike the Civil Service, promotions generally are granted to individuals rather than to occupants of positions, and promotions are made on the supposition that the officers are capable of performing a variety of different assignments within their general category at the level of responsibility to which they are promoted.

Promotions are temporary from a T/O standpoint in that holders of temporary commissions may be reduced to permanent rank at the "pleasure of the President" when authorized strengths are curtailed.

e. Certain positions within the military establishments carry with them a specific rank so long as an individual occupies that particular position. These can be considered as "spot" positions. The provision in law for such arrangement presumably is based on the theory that the specific job is of such stature and nature that an individual deemed qualified to fill the post should have the additional stature and rank while in the post.

f. In summary, it would appear that the military establishment recognized that it must accept a schedule of the various permanent grades from Congress which would be geared to a smaller permanent military establishment than the then swollen emergency military establishment. Therefore, it sought and received statutory authority for temporary promotions on the theory that if they were limited to ten Generals based on an authorized force of ten divisions, then if the number of divisions were expanded to twenty, they should have authority to promote ten more officers to temporary grades of General.

2. Temporary Promotions in the Foreign Service: Promotions in the Foreign Service Personnel categories (Foreign Service Officers, Foreign Service Reserve Officers, and Foreign Service Staff Officers) are made annually on the basis of an evaluation of all personnel by Selection Boards and Review Panels without consideration of particular candidates for specific vacancies.

a. Legal authority for authorizing temporary promotions relates only to personnel in the Foreign Service Staff Officer category. At the time of the promulgation of the Foreign Service Act of 1946, it was deemed inappropriate to provide for a temporary promotion system for the career group within the Foreign Service; namely, Foreign Service Officers. At the present time, however, there is some agitation for providing authority for temporary promotion of Foreign Service Officers. It appears that the need is not a present one, but is based on the possibility that in the future, emergency conditions might require a rapidly expanding Foreign Service and temporary promotions should be authorized for all personnel of the Foreign Service, including the career group. This essentially seems to be similar in justification to the military provisions for temporary promotion of Regular Officers.

b. In 1951 a program of temporary promotions was instituted. The period following World War II saw an acceleration of the functional enlargement of the State Department in overseas areas which had started

during the war years. Large numbers of positions were established for which the Department needed experts, aviation specialists, welfare officers, and administrative officers in all occupational breakdowns. Large numbers of Foreign Service Staff Officers were called upon to assume the responsibilities of positions graded above their own personal rank. The difficulty was accentuated by delays in approving promotions which are unavoidable and inherent in the operation of the promotion panel system. Confronted with these inequities, a policy was adopted for making temporary promotions for personnel in field areas whenever such individuals were fully qualified for the positions. Temporary promotions were confined to cases where persons were serving in positions classified at two or more grades above their personal rank, and provision was made for employees to revert to their permanent rank upon their removal from the positions by transfer or other cause.

c. Although the policy was originally designed for Staff Corps personnel in the U. S. Information and Education Service, the temporary promotion policy was applied to other field missions, notably HICOG. The policy has now been cancelled and no new temporary promotions are being made. Principally, two reasons existed for cancelling the program. These were:

(1) The belief that temporary promotions contradict the principles of the regular career program. The Foreign Service procedures are intended to insure that promotions should be made on demonstrated merit and the availability of openings on a world-wide basis, rather than on a fortuitous coincidence of assignment and lack of other more qualified candidates.

(2) The decision that circumstances of rapidly expanding programs and resulting inequities no longer existed, and that the regular promotion program would be equal to the job of correcting any remaining inequities.

3. Temporary Promotions in the Civil Service: None of the permanent laws relating to civilian employment (with exception of Veterans, which will be discussed later) provides for legislative recognition, or authority, for a system of temporary promotions. Several years ago, the so-called Whitten rider directed that all promotions in the competitive Civil Service be temporary. The administrative havoc created by that rider is well known. It is also true that what amounts to a temporary promotion can be effected by the simple device of promoting a man to a higher rating while he is temporarily occupying a higher rated position. This frequently occurs where an individual is replacing another man who is away either on extended leave of absence or extended temporary duty. In such situations, of course, the individual is advised that the promotion is temporary, and when the occupant of the position returns the temporary occupant is relieved of his duties on that job and returns to his former job. This automatically results in a personnel action to reduce him to the rating of the former job.

a. With respect to Veterans, a different situation obtains. At the present time, over 60% of civilian employees in the United States are Veterans and, therefore, the exception pertaining to Veterans is really the principle policy rather than a true exception. The specific provisions relating to temporary promotion of Veterans are as follows:

(1) Temporary promotions may be made by Federal Agencies for brief periods of time during emergencies or extended leave of absence. Unless all of the following circumstances exist, however, any subsequent adverse action against a Veteran holding a temporary promotion, such as discharge or demotion, must comply with certain procedural steps and is appealable to the Civil Service Commission:

- (a) The temporary promotion may not exceed 90 days.
- (b) The employee is apprised, prior to the promotion, of the temporary character of the position, and that upon expiration of the temporary period he will be returned to his former position.
- (c) The employee clearly understands and consents to the arrangement.

The technical effect of these provisions is that if a Veteran retains the temporary promotion for more than 90 days, he cannot be removed from that position by the simple expedient of the return of the prior occupant. At that time reduction-in-force procedures, which are also provided for in the Veterans Preference Act, would have to be applied, and whoever then was entitled to the position under those procedures would retain the promotion.

b. It can be said that there is no formally recognized temporary promotion system within the Civil Service. The special provisions of law designed to protect Veterans and giving them preference as a matter of national policy substantially prevents an informal program of temporary promotions within the executive departments and agencies.

TAB C

DISCUSSION OF THE ADVANTAGES AND DISADVANTAGES OF TEMPORARY PROMOTIONS
TO SUPERGRADE POSITIONS

1. Examination of other systems of temporary promotions in the Government to determine their experience can be of some help. In a sense the military and Foreign Service systems were designed to meet emergency conditions when the entire establishment was faced with rapid expansion. In such circumstances with the fixed number of permanent grades some relief was necessary in order to place properly rated or ranked individuals in positions the ratings of which were higher than the permanent allocation of grades would permit. The Civil Service system as such is geared to an entirely different concept and up to this time there appears to be no requirement for statutory recognition of a temporary promotion system. Within the Civil Service the Veterans Preference Act has further discouraged any program of temporary promotion.

2. One of the apparent advantages of temporary promotions would be to give flexibility. Such flexibility can be envisaged as being desirable in temporary situations where the incumbent will be absent for an extended period. Another type of situation would appear to be that involving assignment of a Senior Representative abroad. It can be argued that there may be many situations where the supergrade rating for the position is based on a requirement for unique and specialized qualifications. Upon filling such a job and in line with eventual rotation it could well be that such special talents were not necessary in any other job. However, through study of the inventory of supergrade positions within CIA, it is believed that the feasibility of promoting incumbents of supergrade positions to temporary positions would not generally depend upon unique or specialized knowledge and experience. The list of supergrade positions indicates that more generally the supergrade ratings are based on executive responsibility together with a technical knowledge of the field concerned. It is believed, therefore, that any advantage to temporary promotions would depend on the degree of responsibility attaching to the specific position. As an example, if it were proposed that a GS-18 Assistant Director were to go to a university for graduate study of 15 months duration, it would seem both desirable and feasible that his Deputy, a GS-17, be placed in the job for such period with the temporary grade of GS-18. A clear understanding would be reached that the permanent occupant of the position would return to it and the temporary occupant would revert to his former position and grade. A temporary promotion of this type should have a prior determination that the individual is fully qualified in all respects to discharge the responsibilities of the higher rated position. If that determination is not favorable he should not be granted the temporary promotion even though through necessity he would actually be placed in the position. This is based on the principle that a promotion should, with no reservations, recognize that the

man is qualified to fulfill the duties of the job. In those situations where temporary promotions seem appropriate, it is believed that the length of contemplated service in the higher position should be at least one year. There are many situations within CIA where individuals are placed on an "Acting" basis and temporary promotions should not be involved unless the period is of substantial length, such as one year. Otherwise, the administrative problems would outweigh the advantages.

a. Also pertinent at this point is the fact that it is now CIA policy to establish Senior Representative positions in the supergrades on a sliding scale basis from GS-15 through GS-18. With this concept there is no necessity to attempt greater flexibility.

b. In view of the existing ceiling on occupants of supergrade positions flexibility must be achieved within that ceiling. In order to achieve a career service concept some consideration must be given to the establishment of a procedure for promotions which would consider all eligible members of the service and not base considerations for promotion on fortuitous circumstances which find an individual placed in a particular spot.

c. One possible advantage to a program of temporary promotions would be that whenever a man is placed in a position which is higher than his rating the use of a temporary promotion would immediately make available to him the compensation at the higher rate, pending the time it was deemed appropriate to make the promotion permanent. It is believed that this possible advantage is more than outweighed by its disadvantages. In the civilian ranks of Government service there are no true temporary promotion systems. Therefore, the majority of people have come to expect that when they are promoted it is recognition of satisfactory performance in the past and belief that the individual can perform the duties at the higher grade. In such circumstances, it is believed that the recognition accorded the individual, both by way of reward for past services and increased stature, is the primary satisfaction in a promotion and that the increased compensation is secondary.

3. In any particular case involving a temporary promotion, as well as in any program of temporary promotions, there are inherent disadvantages.

a. Experience clearly shows that, even though a promotion may be considered temporary at the time, the longer the individual stays at that grade the more difficult it becomes as a practical matter to return him to the previous lower grade. Various types of natural pressures develop to retain the individual at the higher rating. Thus, a promotion of this type, particularly where it is of indefinite duration, tends to become, *de facto*, a permanent promotion.

b. There is also the danger that management and supervisors, where temporary promotions are permitted, will utilize them for probationary purposes. During such period, it is the hope that it can be determined that the man is qualified. However, in this type of situation again it has been found extremely difficult to demote the individual on the ground that he has not measured up. If the demotion does occur, there are serious adverse effects on the individual as well as his effectiveness in dealing with others. On the other hand, if he is left in the higher grade, the function of the organization is hurt if he is not performing up to par. However, experience again has shown that the tendency in such cases is simply to leave the man in the higher rating and hope that time will solve the problem. Therefore, this Agency under any circumstances should not utilize temporary promotions as a probationary device and should satisfy itself in all particulars prior to promotion, whether permanent or temporary, that the individual is qualified to fulfill in all respects the responsibility of the higher grade. The proper probationary period is before, if possible, and after assumption of duties in the new position, but prior to promotion action.

c. In most tables relating to assimilated ranks, GS-15's are equivalent to Colonels and the supergrades are equivalent to "flag" ranks. Within the military service, there is an intangible but recognizable "hump" over which one must go to reach "flag" rank. This is based in part on the numerical limits of "flag" ranks plus Congressional confirmation of all appointees. It is recognized that there are many outstanding men in the service who for one reason or another do not advance and get over the "hump."

(1) It is believed that over the years there is something to be gained by establishing a similar pattern within the CIA Career Service, utilizing the normal GS schedule and the supergrades. It is believed undesirable to have a large number of temporary promotions to supergrades and subsequent demotions to the GS-15 level.

(2) This problem could be related to the present effort to establish an Executive Inventory within CIA. While that inventory at the present time is not based on supergrade categories, it is believed that the Executive Inventory and the "flag" rank situations are somewhat similar in that they represent top management of the departments concerned. It is suggested that these programs could be blended so that advancement into the supergrade category or Executive Inventory would be meaningful as bringing an individual into the fraternity of the top management. Obviously, a great deal of shifting in and out of this group would be undesirable.